

Appl. No. 10/720,919
Amdt. dated March 31, 2009
Reply to Office action of November 17, 2008

FEE STATEMENT

No additional fee is due because the number and type of currently amended claims are the same as the number and type of originally presented claims. Nevertheless, an appropriate authorization to charge or credit the deposit account of applicant's attorney is enclosed in the required duplicate original form -- to be used if necessary.

ACKNOWLEDGMENT OF INTERVIEW

Applicant gratefully acknowledges the telephone interview granted to his attorney by Examiner Francis T. Palo on March 9, 2009. During that interview, emphasis of the valve structure was discussed as a distinction over the prior art. Such amendments are presented herewith. It is further hoped that this amendment complies with the spirit and letter of that interview. Applicant's attorney remains amenable to assisting the Examiner in the allowance of this application.

DRAWING AMENDMENT

No corrected drawings are required.

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REMARKS/ARGUMENTS

Claims 1, 4 to 10, 12, 14 to 17 and 21 to 26 are in the application. Claims 2, 3, 11, 13 and 18 are cancelled. Claims 19 and 20 are withdrawn from consideration.

Claims 21 to 26 are newly added as a compilation of Claims as originally presented in this application and will be considered as objected to or rejected on the same basis as the claims on which they are based.

Claims 1, 4 to 10, 12, 14 to 17 and 21 to 26 stand rejected under 35 U.S.C. 103 (a) as being obvious and unpatentable over United States Patent 1,939,015 to McLellan (hereafter "McLellan") in view of Midwest miniature reference (hereafter "Midwest").

The rejection under 35 U.S.C. 103 is respectfully traversed.

GENERAL COMMENTS

The rejection of the instant claims over Midwest in view of McLellan combines a piece of relatively recent literature reference up with a much older patent. McLellan suggests over head spray apparatus, which is taught by applicant's specification to be very undesirable and problematic in the production of nursery plants. Midwest relates to watering a group of plants from below at the root. There is no teaching to combine these references. Even if the references are combined, applicant's invention still is not taught.

In support of the distinction between reference used by the Examiner on Midwest and the claimed invention, applicant submits the declaration of Thomas Halat. Thomas Halat is a successful farmer and nursery plant grower. He is familiar with and has used the device of the reference cited by the Examiner; as well as the device of this application. His declaration shows the vast superiority of the claimed invention. The declaration (Pages 1 to 5) forms Pages 29 to 33 of this amendment.

Also attached as Exhibits are color pictures of the invention covered by the claims of the instant application. The pictures were taken at a business of the declarant in the declaration submitted herewith. Comparing those pictures with the reference makes the differences of the claimed

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invention over the reference even more clear.

More specifically, the pictures of Pages 34, 35, 36 and 327, show part of the structure nursery irrigation system 100 of this invention as claimed and assembled. Page 38 shows the check valve 120. Page 39 shows the solenoid 150.

A modification of the references as set forth in the office action, is taught only by the instant application. The advantages are clearly set forth in applicant's specification and specification.

Neither reference suggests supply and removal of water through one line. The Examiner suggests that modifying Midwest from two supply to a one line supply and doing the process from overhead to the root ball of the plants is obvious. Because the one line for both supply and removal of water is only disclosed by applicant, and is not disclosed in either applied reference, this rejection fails to teach or render obvious applicant's invention.

Even if the separate drain for water removal and pipe for water supply in the cited Midwest reference are considered to be one line in spite of that reference's own teaching, applicant's invention still is not taught. There is no prior art teaching to water the root ball of the plant from an overhead source, as discussed in applicant's specification and set forth in his claims.

Thus, the claimed advantages; of efficient use of water by supplying the water to the roots from an overhead structure and removing the water through the same structure, combined with applicant's one line that both supplies and removes water; are a major contribution to water conservation and efficient use of space.

Were the claimed procedure so obvious, the spacing in time between the references would not exist. A rejection using these two references was present in the prior office action. Neither reference addresses problems caused by top down watering and the advantages of combining the same with direct root ball watering. Such topdown watering is criticized in the instant specification and defined as being avoidable and desirable to avoid the same. Neither reference addresses this point in any manner.

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RESPONSE TO 35 U.S.C. 103 REJECTIONS

Claims 1, 4 to 10, 12, 14 to 17 and 21 to 26 stand rejected under 35 U.S.C. 103 (a) as being obvious and unpatentable over McLellan in view of Midwest. Not only are these references improperly combined, even if they are assumed combinable for the sake of argument, applicant's invention still is not taught.

Applicant's invention relates to a nursery irrigation system of feeding water to each root ball of a series of plants situated in a plant tray from an overhead piping system, and removing the water from the tray when the plants have received enough water. Removal of water from or adding water to plants at the ball thereof through the same overhead pipe is nowhere suggested by the applied references. Then when the valves (which valves are used and claimed by applicant in the instant application) are factored into the discussion, the distinctions of applicant's invention over the art cited become crystal clear.

The overhead piping system with the remote water supply is furthermore easily assembled and disassembled. This feature permits the building housing the plant trays, to be used in a wide variety of manners. As the water is drained from the trays, it goes back to the holding tank, thereby reducing waste, and more efficiently using the water. No cited reference or reasonable combination thereof suggests this great advantage of

First, when assembled and used, the nursery irrigation system of this invention feeds water to the root ball of the plants without contacting the leaves of any plants in the tray. This prevents or minimizes water contact with the leaves of the plant and consequently improves the health of the plants (Page 1, Line 10 and Page 4, Line 1 of the specification).

Midwest teaches watering of plants. Midwest was alleged to show a single pipe service for the irrigation table, but it clearly discusses both a drain line and a feed line. The drain line can allow the water to be lost into the ground. McLellan and Wittbolt both teach spraying of plants and require contact of the spray with the leaves of the plants. Midwest does not teach spraying of plants. So using neither Wittbolt nor McLellan to teach directly watering the root ball of a plant without water contact on plant leaves, when

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the sole teaching thereof is spraying. So there is no teaching to combine the references.

Furthermore the spraying of McLellan is inherently wasteful of water. This combined with the draining of Midwest is clearly a waste of water. Such waste is not permitted or tolerated by the claimed invention.

Even if the references are assumed combinable for the sake of argument, applicant's application of the water directly to the root ball, and recycling of the water after the root balls are sufficiently wetted, all from and to an overhead water supply, together with the clear advantages thereof, are not suggested by any reasonable combination of the cited references. Typical of the advantages for this system is the more efficient use of water and the more effective production of plants.

Regarding Claim 1, contrary to the Examiner's assertion, Midwest sets forth a supply line and a drain line. Thus, there are two lines for water, not one as used in the claimed invention.

So not only does applicant show a new function, applicant shows a solution to the major problems caused by top watering of plants and avoids the waste of water.

Regarding Claim 4, applicant is relying on the above-described structure, not just the valve for patentability. The above arguments are incorporated herein.

Regarding Claim 5, applicant is relying on the above-described structure, not just the return valve or check valve for patentability. The above arguments are incorporated herein.

Regarding Claim 6, applicant is relying on the above-described structure, not just the T-lines for patentability. The above arguments are incorporated herein.

Regarding Claims 7 and 8, applicant is relying on the above-described structure, not just the solenoid for patentability. The above arguments are incorporated herein.

Regarding Claims 9 and 10, applicant is relying on the above-described structure, not just the quick valve for patentability. This piping provides for great flexibility in

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the space use, not suggested by either reference. The above arguments are incorporated herein.

Regarding Claim 12, applicant is relying on the above-described structure one line, not just the one of the two discussed in Midwest by the Examiner solenoid for patentability. The above arguments are incorporated herein.

Regarding Claim 14, applicant is relying on the above-described structure, not just the timer for patentability. The above arguments are incorporated herein.

Regarding Claims 15 to 17, applicant is relying on the above-described structure, not just the cited assemblies for patentability. The above arguments are incorporated herein.

Regarding Claims 21 to 26, applicant is relying on the above-described structure, with one line, water conservation, plant watering efficiency and other advantages. The above arguments are incorporated herein.

Applicant's advantages are clearly disclosed, plainly discussed and heavily emphasized in applicant's claims and specification. These factors bring this application into the realm of U. S. v. Adams, 383 U.S. 39, 48-49; 148 USPQ 479, 482 (1966), which includes the following interpretation of the patent law:

"Novelty and nonobviousness, as well as utility, are separate tests of patentability. All must be satisfied in a valid patent.

"While patent claims limit invention, and specification cannot be utilized to expand patent monopoly, claims are construed in light of specification and both are read with a view to ascertaining the invention."

Accordingly, this rejection is respectively traversed and withdrawal thereof is requested.

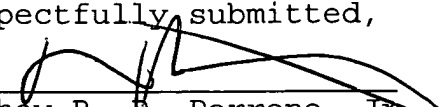
CONCLUSION

Accordingly, all rejections having been overcome by amendment or traversed by remarks, reconsideration and allowance of the instant application is respectfully requested. Applicant's attorney remains amenable to assisting the Examiner in the allowance of this application.

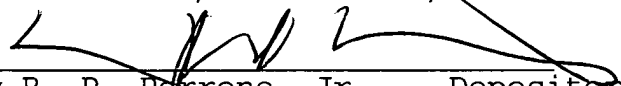
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Applicant respectfully requests that a timely notice of allowance be issued in this case.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited by express mail addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 31, 2009.


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